

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2179 Session of 2008

INTRODUCED BY DALEY, HESS, THOMAS, SIPTROTH, SCAVELLO, MCGEEHAN, GEORGE, BELFANTI, BRENNAN, CARROLL, JAMES, JOSEPHS, MAHONEY, MYERS, SANTONI, WALKO, BENNINGTON, HARHAI, KOTIK, WAGNER, J. WHITE AND YEWCIC, FEBRUARY 6, 2008

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 2008

AN ACT

1 Amending Titles 7 (Banks and Banking) and 18 (Crimes and
2 Offenses) of the Pennsylvania Consolidated Statutes,
3 regulating the mortgage loan industry in terms of practice,
4 licensure and penalties; and providing for unlicensed
5 mortgage loan activity; AND MAKING RELATED REPEALS.

<—
<—

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 7 of the Pennsylvania Consolidated Statutes
9 is amended by adding parts to read:

PART I

PRELIMINARY PROVISIONS

(Reserved)

PART II

LICENSING

Ch.

61. Mortgage Loan Industry Licensing and Consumer Protection

CHAPTER 61

MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER PROTECTION

- 1 Subch.
- 2 A. Preliminary Provisions
- 3 B. License Requirements and Exceptions
- 4 C. Mortgage Loan Business Restrictions and Requirements
- 5 D. Administrative and Licensure Provisions
- 6 E. Miscellaneous Provisions

7 SUBCHAPTER A

8 PRELIMINARY PROVISIONS

9 Sec.

10 6101. Scope of chapter.

11 6102. Definitions.

12 § 6101. Scope of chapter.

13 This chapter relates to mortgage loan industry licensing and
14 consumer protection.

15 § 6102. Definitions.

16 The following words and phrases when used in this chapter
17 shall have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 "Advance fee." Any funds requested by or to be paid to a
20 person in advance of or during the processing of a mortgage loan
21 application, excluding those fees paid by a consumer directly to
22 a credit agency reporting bureau, title company or real estate
23 appraiser.

24 "Applicant." A person who applies for a license under this
25 chapter.

26 "Banking institution." Any of the following:

27 (1) A State-chartered bank, bank and trust company,
28 savings bank or private bank.

29 (2) A national bank.

30 (3) A federally chartered or State-chartered savings

1 association.

2 (4) An operating subsidiary of any of the entities
3 listed under this definition.

4 "Billing cycle." In respect to open-end mortgage loans, the
5 time interval between periodic billing dates. A billing cycle
6 shall be considered to be a monthly cycle if the closing date of
7 the cycle is the same date each month or does not vary by more
8 than four days from that date.

9 "Branch." An office or other place of business, other than
10 the principal place of business, located in this Commonwealth or
11 any other state, where a person engages in the mortgage loan
12 business subject to this chapter.

13 "Consumer discount company." A licensee under the act of
14 April 8, 1937 (P.L.262, No.66), known as the Consumer Discount
15 Company Act.

16 "Department." The Department of Banking of the Commonwealth.

17 "Finder's fee" or "referral fee." Any payment of money or
18 other consideration for the referral of a mortgage loan to a
19 licensee, except for consideration paid for goods or facilities
20 actually furnished or services actually performed.

21 "First mortgage loan." A loan which is secured in whole or
22 in part by a first lien upon any interest in real property
23 created by a security agreement, including a mortgage,
24 indenture, deed of trust or any other similar instrument or
25 document, which real property is used as a one-family to four-
26 family dwelling, a portion of which may be used for
27 nonresidential purposes.

28 "First mortgage loan business." The mortgage loan business
29 as applied to first mortgage loans.

30 "Licensee." A person who is licensed under this chapter.

1 "Lock-in agreement." An agreement between a mortgage lender
2 and a consumer whereby the mortgage lender guarantees, until a
3 specified date, the availability of a specified rate of interest
4 or specified formula by which the rate of interest and a
5 specific number of discount points will be determined, if the
6 mortgage loan is approved and closed by the specified date. If a
7 specified date is not determinable, the mortgage lender may
8 fulfill the requirement of this definition by setting forth with
9 specificity the method by which the duration of the lock-in
10 period will be determined.

11 "Mortgage broker." A person who engages in the mortgage loan
12 business by directly or indirectly negotiating or placing
13 mortgage loans for others in the primary market for
14 consideration.

15 "Mortgage lender." A person who engages in the mortgage loan
16 business by ~~doing any of the following:~~ <—

17 ~~(1) Directly or indirectly originating and closing~~
18 ~~mortgage loans with its own funds in the primary market for~~
19 ~~consideration.~~

20 ~~(2) Servicing mortgage loans. DIRECTLY OR INDIRECTLY~~ <—
21 ~~ORIGINATING AND CLOSING MORTGAGE LOANS WITH ITS OWN FUNDS IN~~
22 ~~THE PRIMARY MARKET FOR CONSIDERATION.~~

23 "Mortgage loan." A first or secondary mortgage loan, or
24 both, as the context may require.

25 "Mortgage loan business." The business of advertising,
26 causing to be advertised, soliciting, negotiating or arranging
27 in the ordinary course of business or offering to make or making
28 ~~or servicing~~ mortgage loans. <—

29 "Mortgage loan correspondent." A person who engages in the
30 mortgage loan business by directly or indirectly originating and

1 closing mortgage loans in his or her own name utilizing funds
2 provided by a wholesale table funder or other funding sources
3 under the circumstances described under section 6123(6)
4 (relating to mortgage loan business prohibitions) and
5 simultaneously assigning the mortgage loans to the wholesale
6 table funder.

7 "Mortgage originator." An individual not licensed as a
8 mortgage lender, mortgage broker or loan correspondent under
9 this chapter who solicits, accepts or offers to accept mortgage
10 loan applications, or negotiates mortgage loan terms, in other
11 than a clerical or ministerial capacity and who is personally
12 and regularly in direct contact, in writing, including
13 electronic messaging, or by voice communication, with consumers
14 with regard to the solicitations, acceptances, offers or
15 negotiations. The term does not include directors, partners or
16 ultimate equitable owners of 10% or more of a licensee.

17 "Open-end loan." A mortgage loan made by a mortgage lender
18 under this chapter pursuant to an agreement between the mortgage
19 lender and the consumer whereby all of the following apply:

20 (1) The mortgage lender may permit the consumer to
21 obtain advances of money from the licensee from time to time
22 or the mortgage lender may advance money on behalf of the
23 consumer from time to time as directed by the consumer.

24 (2) The amount of each advance, interest and permitted
25 charges and costs are debited to the consumer's account and
26 payments and other credits are credited to the same account.

27 (3) Interest is computed on the unpaid principal balance
28 or balances of the account outstanding from time to time.

29 (4) The consumer has the privilege of paying the account
30 in full at any time or, if the account is not in default, in

1 monthly installments of fixed or determinable amounts as
2 provided in the open-end loan agreement.

3 "Person." An individual, association, joint venture or
4 joint-stock company, partnership, limited partnership, limited
5 partnership association, limited liability company, business
6 corporation, nonprofit corporation or any other group of
7 individuals, however organized.

8 "Primary market." The market wherein mortgage loans are
9 originated between a lender and a consumer.

10 "Principal place of business." The primary office of a
11 person located in this Commonwealth which is staffed on a full-
12 time basis and at which the person's books, records, accounts
13 and documents are maintained.

14 "Secondary mortgage loan." A loan which is secured in whole
15 or in part by a lien upon any interest in real property created
16 by a security agreement, including a mortgage, indenture, deed
17 of trust or any other similar instrument or document, which real
18 property is subject to a prior lien and which is used as a one-
19 family to four-family dwelling, a portion of which may be used
20 for nonresidential purposes.

21 "Secondary mortgage loan business." The mortgage loan
22 business as applied to secondary mortgage loans.

23 ~~"Service a mortgage loan." The collection or remittance of~~ <—
24 ~~payments for another or the right to collect or remit payments~~
25 ~~for another of principal, interest, taxes, insurance and any~~
26 ~~other payments pursuant to a mortgage loan.~~

27 "Tangible net worth." Net worth less the following assets:

28 (1) That portion of any assets pledged to secure
29 obligations of any person other than that of the applicant.

30 (2) Any asset, except construction loan receivables

1 secured by first mortgages from related companies, due from
2 officers or stockholders of the applicant or related
3 companies in which the applicant's officers or stockholders
4 have an interest.

5 (3) That portion of the value of any marketable
6 security, listed or unlisted, not shown at lower of cost or
7 market value, except for any shares of Federal National
8 Mortgage Association stock required to be held under a
9 servicing agreement, which are carried at cost.

10 (4) Any amount in excess of the lower of the cost or
11 market value of mortgages in foreclosures, construction loans
12 or foreclosed property acquired by the applicant through
13 foreclosure.

14 (5) Any investment shown on the balance sheet in the
15 applicant's joint ventures, subsidiaries, affiliates or
16 related companies which is greater than the value of the
17 assets at equity.

18 (6) Goodwill.

19 (7) The value placed on insurance renewals or property
20 management contract renewals or other similar intangibles of
21 the applicant.

22 (8) Organization costs of the applicant.

23 (9) The value of any servicing contracts held by the
24 applicant not determined in accordance with the American
25 Institute of Certified Public Accountants Statement of
26 Position 76-2, dated August 25, 1976, or subsequent revisions
27 thereto.

28 (10) Any real estate held for investment where
29 development will not start within two years from the date of
30 its initial acquisition.

1 broker or mortgage loan correspondent license and, if
2 licensed as an individual, may perform the services of a
3 mortgage originator without a separate mortgage originator
4 license.

5 (2) A mortgage loan correspondent may act as a mortgage
6 broker without a separate mortgage broker license and, if
7 licensed as an individual, may perform the services of a
8 mortgage originator without a separate mortgage originator
9 license.

10 (3) A person licensed as a mortgage broker may only
11 perform the services of a mortgage broker. If a mortgage
12 broker is licensed as an individual, a mortgage broker may
13 perform the services of a mortgage originator without a
14 separate mortgage originator license.

15 (c) Loans for business or commercial purposes.--This chapter
16 shall not apply to mortgage loans made for business or
17 commercial purposes.

18 § 6112. Exceptions to license requirements.

19 The following persons shall not be required to be licensed
20 under this chapter in order to conduct the mortgage loan
21 business:

22 (1) A banking institution or a federally chartered or
23 State-chartered credit union, if the primary regulator of the
24 banking institution or federally chartered or State-chartered
25 credit union supervises the banking institution or federally
26 chartered or State-chartered credit union.

27 (2) An attorney authorized to practice law in this
28 Commonwealth not otherwise engaged in or holding himself or
29 herself out to the public as being engaged in the mortgage
30 loan business who acts as a mortgage broker in negotiating or

1 placing a mortgage loan in the normal course of legal
2 practice.

3 (3) A person who either originates, negotiates or
4 services less than three mortgage loans in a calendar year in
5 this Commonwealth, unless the person is otherwise deemed to
6 be engaged in the mortgage loan business by the department.

7 (4) Any agency or instrumentality of the Federal
8 Government or a corporation otherwise created by an act of
9 the United States Congress, including the Federal National
10 Mortgage Association, the Government National Mortgage
11 Association, the Veterans' Administration, the Federal Home
12 Loan Mortgage Corporation and the Federal Housing
13 Administration.

14 (5) Any agency or instrumentality of a state or local
15 government, the District of Columbia or any territory of the
16 United States, including the Pennsylvania Housing Finance
17 Agency and other government housing finance agencies.

18 (6) Consumer discount companies, except that a consumer
19 discount company that acts as a mortgage broker, mortgage
20 lender or mortgage loan correspondent other than under the
21 provisions of the act of April 8, 1937 (P.L.262, No.66),
22 known as the Consumer Discount Company Act shall be subject
23 to the provisions of Subchapter C (relating to mortgage loan
24 business restrictions and requirements) and sections
25 6131(c)(2) and (3) (relating to application for license),
26 6135 (relating to licensee requirements), 6138 (relating to
27 authority of department) and 6140(b) (relating to penalties).
28 Employees of licensees under the Consumer Discount Company
29 Act that act as mortgage originators shall be subject to the
30 licensing requirements of this chapter. Consumer discount

1 companies that employ mortgage originators shall be subject
2 to the same requirements as mortgage lenders in regard to the
3 employment and supervision of mortgage originators.

4 (7) Except for consumer discount companies, affiliates
5 of banking institutions and subsidiaries and affiliates of
6 federally chartered or State-chartered credit unions, except
7 that the subsidiaries and affiliates shall:

8 (i) be subject to the provisions of Subchapter C and
9 sections 6135(a)(2), (3), (4) and (5), (b) and (c), 6138
10 and 6140(b);

11 (ii) deliver as required to the department annually
12 copies of financial reports made to all supervisory
13 agencies; and

14 (iii) be registered with the department.

15 (8) Employees of a mortgage broker, mortgage lender or
16 mortgage loan correspondent, to the extent that the employees
17 are not otherwise required to be licensed as mortgage
18 originators.

19 (9) Employees of excepted persons enumerated under this
20 section, unless otherwise provided under this subsection.

21 (10) Any individual not otherwise engaged in or holding
22 himself out to the public as being engaged in the mortgage
23 loan business who becomes the subsequent holder of more than
24 two mortgage loans in a calendar year solely for investment
25 purposes and who does not service mortgage loans.

26 (11) Nonprofit corporations not otherwise engaged in or
27 holding themselves out to the public as being engaged in the
28 mortgage loan business making mortgage loans to promote home
29 ownership or improvements for the disadvantaged.

30 (12) A nonprofit corporation not otherwise engaged in or

1 holding itself out to the public as being engaged in the
2 mortgage loan business which meets all of the following:

3 (i) Does not make more than 12 mortgage loans in a
4 calendar year with its own funds, not including funds
5 borrowed through warehouse lines of credit or other
6 sources for the purpose of making mortgage loans.

7 (ii) Makes mortgage loans which are retained in the
8 corporation's own portfolios and not regularly sold to
9 others and are made to promote and advance the cultural
10 traditions and lifestyles of bona fide religious
11 organizations.

12 SUBCHAPTER C

13 MORTGAGE LOAN BUSINESS RESTRICTIONS AND REQUIREMENTS

14 Sec.

15 6121. General requirements.

16 6122. Powers conferred on certain licensees engaged in the
17 mortgage loan business.

18 6123. Mortgage loan business prohibitions.

19 6124. Prohibited clauses in mortgage loan documents.

20 6125. Mortgage lending authority.

21 6126. Requirements as to open-end loans.

22 § 6121. General requirements.

23 A licensee shall do all of the following:

24 (1) Comply with all provisions of the act of January 30,
25 1974 (P.L.13, No.6), referred to as the Loan Interest and
26 Protection Law (Usury Law). This paragraph shall not
27 supersede section 501 of the Depository Institutions
28 Deregulation and Monetary Control Act of 1980 (94 Stat. 161,
29 12 U.S.C. § 1735f-7a) or the Alternative Mortgage Transaction
30 Parity Act of 1982 (96 Stat. 1545, 12 U.S.C. §§ 3801-3806 et

1 seq.).

2 (2) Comply with the provisions of the act of December 3,
3 1959 (P.L.1688, No.621), known as the Housing Finance Agency
4 Law, that are applicable to the licensee.

5 (3) Comply with all applicable Federal law, including
6 the Real Estate Settlement Procedures Act (88 Stat. 1724, 12
7 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat.
8 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit
9 Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 et seq.).

10 (4) Give to the consumer a copy of the promissory note
11 evidencing the mortgage loan and any mortgage loan agreement,
12 mortgage instrument or other document evidencing a mortgage
13 loan signed by the consumer.

14 (5) Give to the consumer written evidence of credit
15 life, credit and accident and health, credit unemployment and
16 property insurance, if any, provided by the licensee to the
17 consumer.

18 (6) If a payment is made in cash on account of a
19 mortgage loan, give to the consumer at the time the payment
20 is actually received a written receipt which shall show the
21 account number or other identification mark or symbol, date,
22 amount paid and, upon request of the consumer, the unpaid
23 balance of the account prior to and after the cash payment.

24 (7) Upon written request from the consumer, give or
25 forward to the consumer within ten days from the date of
26 receipt of the request a written statement of the consumer's
27 account which shall show the dates and amounts of all
28 installment payments credited to the consumer's account, the
29 dates, amounts and an explanation of all other charges or
30 credits to the account and the unpaid balance of the account.

1 A licensee shall not be required to furnish more than two
2 statements in any 12-month period.

3 (8) If a mortgage loan is paid in full or, in the case
4 of an open-end loan, the mortgage lender is no longer
5 obligated to make future advances to the consumer, the
6 mortgage lender shall do all of the following:

7 (i) Cancel any insurance provided by the licensee in
8 connection with the mortgage loan and refund to the
9 consumer, in accordance with regulations promulgated by
10 the Insurance Department, any unearned portion of the
11 premium for the insurance.

12 (ii) Stamp or write on the face of the mortgage loan
13 agreement or promissory note evidencing the mortgage loan
14 "Paid in Full" or "Canceled," the date paid and, within
15 60 days, return the mortgage loan agreement or promissory
16 note to the consumer.

17 (iii) Release any lien on real property and cancel
18 the same of record and, at the time the mortgage loan
19 agreement or promissory note evidencing the mortgage loan
20 is returned, deliver to the consumer good and sufficient
21 assignments, releases or any other certificate,
22 instrument or document as may be necessary to evidence
23 the release.

24 (9) Provide for periodic accounting of any escrow
25 accounts held by the mortgage lender to the consumer not less
26 than annually, showing the amounts received from the consumer
27 and the amounts disbursed from the accounts.

28 (10) Refund all fees, other than those fees paid by the
29 licensee to a third party, paid by a consumer when a mortgage
30 loan is not produced within the time specified by the

1 mortgage broker, mortgage lender or mortgage loan
2 correspondent at the rate, term and overall cost agreed to by
3 the consumer. This paragraph shall not apply if the failure
4 to produce a mortgage loan is due solely to the consumer's
5 negligence, his or her refusal to accept and close on a loan
6 commitment or his or her refusal or inability to provide
7 information necessary for processing, including employment
8 verifications and verifications of deposits. The licensee
9 shall disclose to the consumer, in writing, at the time of a
10 loan application which fees paid or to be paid are
11 nonrefundable.

12 (11) Ensure that all lock-in agreements shall be in
13 writing and shall contain at least the following provisions:

14 (i) The expiration date of the lock-in, if any.

15 (ii) The interest rate locked in, if any.

16 (iii) The discount points locked in, if any.

17 (iv) The fee locked in, if any.

18 (v) The lock-in fee, if any.

19 (12) Upon written request from the consumer or a person
20 authorized by the consumer, provide, within ten days from the
21 date of receipt of the request, a written statement regarding
22 the unpaid balance of a consumer's mortgage loan or account.
23 The statement shall contain the total amount required to pay
24 off a mortgage loan and a specific expiration date for the
25 payoff information. A licensee shall not be required to
26 furnish more than two statements in any 12-month period.

27 (13) In the case of a mortgage broker, mortgage lender or
28 mortgage loan correspondent, do all of the following:

29 (i) Maintain supervision and control of and

30 responsibility for the acts and omissions of all mortgage

1 originators employed by the licensee.

2 (ii) Maintain a list of all current and former
3 mortgage originators employed by the licensee and the
4 dates of the employment.

5 (iii) In the event that a licensee believes that a
6 mortgage originator employed by the licensee has engaged
7 in any activity that is illegal or in violation of this
8 chapter or any regulation or statement of policy
9 promulgated under this chapter, the licensee shall
10 provide the department with written notification of the
11 belief and the licensee's proposed corrective measures
12 within 30 days. A licensee shall not be liable to a
13 mortgage originator in connection with the notification.

14 § 6122. Powers conferred on certain licensees engaged in the
15 mortgage loan business.

16 (a) Mortgage lenders.--If they are in compliance with the
17 provisions of this chapter, all mortgage lenders engaged in the
18 mortgage loan business shall have power and authority:

19 (1) To make first and secondary mortgage loans.

20 (2) To collect fees or premiums for title examination,
21 abstract of title, title insurance, credit reports, surveys,
22 appraisals, notaries, postage, including messenger and
23 express carrier, tax service or other costs or fees actually
24 related to the processing of a mortgage loan application or
25 making of a mortgage loan, when the fees are actually paid or
26 incurred by the licensee and to collect fees or charges
27 prescribed by law which actually are or will be paid to
28 public officials for determining the existence of or for
29 perfecting or releasing or satisfying any security related to
30 the mortgage loan and include these in the principal of the

1 mortgage loan.

2 (3) To provide access to credit life, credit disability,
3 credit accident and health and credit unemployment insurance.

4 A consumer shall not be compelled to purchase credit life,
5 credit disability, credit accident and health or credit
6 unemployment insurance as a condition of the making of a
7 mortgage loan, and all contracts utilized shall reflect a
8 clear disclosure that the purchase of credit life, credit
9 disability, credit accident and health or credit unemployment
10 insurance is not a prerequisite to obtaining a mortgage loan.

11 If, however, the consumer elects to obtain credit life,
12 credit disability, credit accident and health or credit
13 unemployment insurance through the licensee, the consumer
14 shall consent thereto in writing. If consumers desire joint-
15 life or joint accident and health insurance, all consumers
16 shall consent thereto in writing. The insurance shall be
17 obtained from an insurance company authorized by the laws of
18 this Commonwealth to conduct business in this Commonwealth.
19 Any benefit or return to the licensee from the sale or
20 provision of the insurance shall not be included in the
21 computation of the maximum charge authorized for mortgage
22 loans under this chapter and shall not be deemed a violation
23 of this chapter when the insurance is written pursuant to the
24 laws of this Commonwealth governing insurance.

25 (4) To require property insurance on security against
26 reasonable risks of loss, damage and destruction and to
27 provide access to the insurance to the consumer. The amount
28 and term of the insurance shall be reasonable in relation to
29 the amount and term of the mortgage loan contract and the
30 value of the security. This requirement shall be satisfied if

1 the consumer demonstrates at the time the mortgage loan is
2 made that the consumer has valid and collectible insurance
3 covering the property to be insured and has furnished the
4 licensee with a loss payable endorsement sufficient for the
5 protection of the licensee. If the consumer elects to obtain
6 property insurance through the licensee, the consumer shall
7 consent thereto in writing, and the insurance shall be
8 obtained from an insurance company authorized by the laws of
9 this Commonwealth to conduct business in this Commonwealth.
10 Any benefit or return to the licensee from the sale or
11 provision of property insurance shall not be included in the
12 computation of the maximum charge authorized for mortgage
13 loans under this chapter and shall not be deemed a violation
14 of this chapter when the insurance is written pursuant to the
15 laws of this Commonwealth governing insurance. The premium
16 for any property insurance may be included in the principal
17 amount of the mortgage loan requested by the consumer.
18 However, the premium shall be disclosed as a separate item on
19 the face of the principal contract document and the
20 licensee's individual consumer ledger records.

21 (5) To collect a fee for a subsequent dishonored check
22 or instrument taken in payment, not to exceed the service
23 charge permitted to be imposed under 18 Pa.C.S. § 4105
24 (relating to bad checks).

25 (b) Mortgage brokers and loan correspondents.--Provided they
26 are in compliance with the provisions of this chapter, all
27 mortgage brokers and mortgage loan correspondents shall have
28 power and authority:

29 (1) To collect title examination, credit report and
30 appraisal fees actually related to the making of a mortgage

1 loan when the fees are actually paid or incurred by the
2 licensee and to include the fees in the principal of the
3 mortgage loan which is being negotiated or arranged.

4 (2) To charge a broker's fee if the fee is disclosed to
5 the consumer for whom the loan is being negotiated or
6 arranged.

7 (3) To accept from a licensee a fee or premium for
8 brokering or cobrokering a mortgage loan, provided that the
9 payment and acceptance of the fee or premium is in compliance
10 with Federal law, including the Real Estate Settlement
11 Procedures Act of 1974 (Public Law 93-533, 88 Stat. 1724).

12 § 6123. Mortgage loan business prohibitions.

13 A licensee engaging in the mortgage loan business shall not:

14 (1) Charge, contract for, collect or receive charges,
15 fees, premiums, commissions or other considerations in excess
16 of those authorized by the provisions of this chapter.

17 (2) Disburse the proceeds of a mortgage loan in any form
18 other than cash, electronic funds transfer, certified check
19 or cashier's check where the proceeds are disbursed by the
20 licensee to a closing agent. This paragraph shall not be
21 construed as requiring a lender to utilize a closing agent
22 and shall not apply to disbursements by check directly from
23 the licensee's account payable to the consumer, consumer
24 designees or other parties due funds from the closing.

25 (3) Advertise, cause to be advertised or otherwise
26 solicit whether orally, in writing, by telecast, by broadcast
27 or in any other manner any statement or representation which
28 is false, misleading or deceptive.

29 (4) Require a consumer to pay, to the licensee or any
30 other person, a broker's fee, finder's fee, commission,

1 premium or any other charges for obtaining, procuring or
2 placing of a mortgage loan, except as provided under this
3 chapter. This restriction shall not prohibit a mortgage
4 lender from paying a fee to a mortgage broker in connection
5 with the placement or procurement of a mortgage loan, nor
6 prohibit a consumer from requesting or directing a mortgage
7 lender licensee to pay a fee from the proceeds of a mortgage
8 loan or include it in the amount to be financed.

9 (5) Make any mortgage loan on the condition, agreement
10 or understanding that the consumer contract with any specific
11 person or organization for insurance services as agent,
12 broker or underwriter.

13 (6) In the case of a mortgage loan correspondent,
14 service mortgage loans or close mortgage loans utilizing
15 funding other than a wholesale table funder, except in an
16 emergency circumstance where wholesale table funding is not
17 available.

18 (7) In the case of a mortgage broker or mortgage
19 originator, commit to close or close mortgage loans in its
20 own name, service mortgage loans, enter into lock-in
21 agreements or collect lock-in fees, provided, however, that a
22 mortgage broker or mortgage originator can provide a lender's
23 lock-in agreement to a consumer on behalf of that lender and
24 collect lock-in fees payable to that lender on the lender's
25 behalf.

26 (8) In the case of a mortgage originator, accept any
27 fees from consumers in the mortgage originator's own name. A
28 mortgage originator may accept fees payable to the mortgage
29 originator's employer licensee and fees payable to third-
30 party entities on behalf of the mortgage originator's

1 employer licensee. A mortgage originator may not accept
2 advance fees payable to the mortgage originator's employer
3 licensee unless the licensee is authorized to collect advance
4 fees under this chapter.

5 § 6124. Prohibited clauses in mortgage loan documents.

6 No writing of any kind executed in connection with a mortgage
7 loan shall contain:

8 (1) An agreement whereby the consumer waives any rights
9 accruing to the consumer under the provisions of this
10 chapter.

11 (2) An irrevocable wage assignment of, or order for the
12 payment of, any salary, wages, commissions or any other
13 compensation for services, or any part thereof, earned or to
14 be earned.

15 (3) An agreement to pay any amount other than the unpaid
16 balance of the mortgage loan agreement or promissory note or
17 any other charge authorized by this chapter.

18 § 6125. Mortgage lending authority.

19 (a) First mortgage loans.--Mortgage lenders engaged in the
20 first mortgage loan business may make first mortgage loans
21 pursuant to:

22 (1) the act of January 30, 1974 (P.L.13, No.6), referred
23 to as the Loan Interest and Protection Law; or

24 (2) if the licensee is qualified, applicable Federal
25 law, including the Alternative Mortgage Transaction Parity
26 Act of 1982 (Public Law 97-320, 12 U.S.C. § 3801 et seq.) and
27 the Depository Institution Deregulation and Monetary Control
28 Act of 1980 (94 Stat. 161, Public Law 96-221).

29 (b) Secondary mortgage loans.--Mortgage lenders engaged in
30 the secondary mortgage loan business may:

1 (1) if the licensee is qualified, make secondary
2 mortgage loans on terms as are permissible under applicable
3 Federal law, including the Alternative Mortgage Transaction
4 Parity Act of 1982; or

5 (2) (i) make secondary mortgage loans repayable in
6 installments and charge, contract for and receive thereon
7 interest at a rate not exceeding 1.85% per month. No
8 interest shall be paid, deducted or received in advance,
9 except that interest from the date of disbursement of
10 funds to the consumer to the first day of the following
11 month and shall be permitted in the event the first
12 installment payment is more than 30 days after the date
13 of disbursement. Interest shall not be compounded and
14 shall be computed only on unpaid principal balances.
15 However, the inclusion of earned interest in a new note
16 shall not be considered compounding. For the purpose of
17 computing interest, a month shall be any period of 30
18 consecutive days;

19 (ii) charge and collect an application fee not
20 exceeding 3% of the original principal amount of the
21 mortgage loan. The fee shall be fully earned at the time
22 the mortgage loan is made and may be added to the
23 principal amount of the mortgage loan. No application fee
24 may be collected on subsequent advances made pursuant to
25 an open-end loan if the full fee of 3% of the credit
26 limit was collected at the time the open-end loan was
27 made; or

28 (iii) charge and collect a delinquency charge of \$20
29 or 10% of each payment, whichever is greater, for a
30 payment which is more than 15 days late.

1 § 6126. Requirements as to open-end loans.

2 The following shall apply:

3 (1) A mortgage lender may make open-end loans and may
4 contract for and receive thereon interest and charges as set
5 forth under this chapter.

6 (2) A mortgage lender shall not compound interest by
7 adding any unpaid interest authorized by this section to the
8 unpaid principal balance of the consumer's account, provided
9 however, that the unpaid principal balance may include the
10 additional charges authorized by this subchapter.

11 (3) Interest authorized by this section shall be deemed
12 not to exceed the maximum interest permitted by this
13 subchapter if the interest is computed in each billing cycle
14 by any of the following methods:

15 (i) by converting the monthly rate to a daily rate
16 and multiplying the daily rate by the applicable portion
17 of the daily unpaid principal balance of the account, in
18 which case the daily rate shall be 1/30 of the monthly
19 rate;

20 (ii) by multiplying the monthly rate by the
21 applicable portion of the average monthly unpaid
22 principal balance of the account in the billing cycle, in
23 which case the average daily unpaid principal balance is
24 the sum of the amount unpaid each day during the cycle
25 divided by the number of days in the cycle; or

26 (iii) by converting the monthly rate to a daily rate
27 and multiplying the daily rate by the average daily
28 unpaid principal balance of the account in the billing
29 cycle, in which case the daily rate shall be 1/30 of the
30 monthly rate.

1 (4) For all of the methods of computation in paragraph
2 (3)(i), (ii) and (iii), the billing cycle shall be monthly,
3 and the unpaid principal balance on any day shall be
4 determined by adding to any balance unpaid as of the
5 beginning of that day all advances and other permissible
6 amounts charged to the consumer and deducting all payments
7 and other credits made or received that day.

8 (5) The consumer may at any time pay all or any part of
9 the unpaid balance in the consumer's account without
10 prepayment penalty or, if the account is not in default, the
11 consumer may pay the unpaid principal balance in monthly
12 installments. Minimum monthly payment requirements shall be
13 determined by the licensee and set forth in the agreement
14 evidencing the open-end loan.

15 (6) A mortgage lender may contract for and receive the
16 fees, costs and expenses permitted by this subchapter on
17 other first or secondary mortgage loans, subject to all the
18 conditions and restrictions set forth in this subchapter,
19 with the following variations:

20 (i) If credit life or disability insurance is
21 provided and if the insured dies or becomes disabled when
22 there is an outstanding open-end loan indebtedness, the
23 insurance shall be sufficient to pay the total balance of
24 the loan due on the date of the consumer's death in the
25 case of credit life insurance, or all minimum payments
26 which become due on the loan during the covered period of
27 disability in the case of credit disability insurance.
28 The additional charge for credit life insurance or credit
29 disability insurance shall be calculated in each billing
30 cycle by applying the current monthly premium rate for

1 insurance, as the rate may be determined by the Insurance
2 Commissioner, to the unpaid balances in the consumer's
3 account, using any of the methods specified in paragraph
4 (3) for the calculation of loan charges.

5 (ii) No credit life or disability insurance written
6 in connection with an open-end loan shall be canceled by
7 the licensee because of delinquency of the consumer in
8 the making of the required minimum payments on the loan
9 unless one or more of the payments is past due for a
10 period of 90 days or more, and the licensee shall advance
11 to the insurer the amounts required to keep the insurance
12 in force during the period, which amounts may be debited
13 to the consumer's account.

14 (iii) The amount, terms and conditions of any
15 insurance against loss or damage to property must be
16 reasonable in relation to character and value of the
17 property insured and the maximum anticipated amount of
18 credit to be extended.

19 (7) Notwithstanding any other provisions in this chapter
20 to the contrary, a mortgage lender may retain any security
21 interest in real or personal property until the open-end loan
22 is terminated, provided that, if there is no outstanding
23 balance in the account and there is no commitment by the
24 licensee to make advances, the mortgage lender shall, within
25 ten days following written demand by the consumer, deliver to
26 the consumer a release of the mortgage, indenture, deed of
27 trust or any other similar instrument or document on any real
28 property taken as security for the open-end loan. The
29 mortgage lender shall include on all billing statements
30 provided in connection with an open-end loan a statement that

1 the licensee retains a security interest in the consumer's
2 real property whenever the security interest has not been
3 released.

4 (8) A mortgage lender may charge, contract for, receive
5 or collect on any open-end loan account an annual fee not to
6 exceed \$50 per year.

7 SUBCHAPTER D

8 ADMINISTRATIVE AND LICENSURE PROVISIONS

9 Sec.

10 6131. Application for license.

11 6132. License fees.

12 6133. Issuance of license.

13 6134. License duration.

14 6135. Licensee requirements.

15 6136. Licensee limitations.

16 6137. Surrender of license.

17 6138. Authority of department.

18 6139. Suspension, revocation or refusal.

19 6140. Penalties.

20 § 6131. Application for license.

21 (a) Contents.--An application for a license under this
22 chapter shall be on a form prescribed and provided by the
23 department.

24 (1) In the case of a mortgage broker, mortgage lender or
25 mortgage loan correspondent, the application shall include
26 the following:

27 (i) The name of the applicant.

28 (ii) The address of the principal place of business
29 of the applicant and the address or addresses where the
30 applicant's mortgage loan business is to be conducted.

1 (iii) The full name, official title and business
2 address of each director and principal officer of the
3 mortgage loan business.

4 (iv) Any other information that may be required by
5 the department.

6 (2) In the case of a mortgage originator, the
7 application shall include the following:

8 (i) The name of the applicant.

9 (ii) The name of the employer licensee of the
10 applicant and location of the employer licensee to which
11 the applicant is assigned.

12 (iii) Any other information that may be required by
13 the department.

14 (3) An applicant shall demonstrate to the department
15 that policies and procedures have been developed to receive
16 and process consumer inquiries and grievances promptly and
17 fairly.

18 (b) Duty to update.--All applicants and licensees shall be
19 required to provide the department with written notice of the
20 change in any information contained in an application for a
21 license or for any renewal of a license within ten days of an
22 applicant or licensee becoming aware of the change.

23 (c) Mortgage lender license.--The department shall issue a
24 mortgage lender license applied for under this chapter if the
25 applicant has:

26 (1) Been approved by or meets the current criteria for
27 approval of at least one of the following:

28 (i) Federal National Mortgage Association.

29 (ii) Federal Home Loan Mortgage Corporation.

30 (iii) Federal Housing Administration.

1 (2) Been approved for and will continue to maintain as a
2 licensee a line of credit, repurchase agreement or equivalent
3 mortgage-funding capability of not less than \$1,000,000.

4 (3) Established a minimum tangible net worth of \$250,000
5 at the time of application and will, at all times thereafter,
6 maintain the minimum tangible net worth.

7 (4) Been approved for and will continue to maintain as a
8 licensee fidelity bond coverage in accordance with the
9 guidelines established by the Federal National Mortgage
10 Association or the Federal Home Loan Mortgage Corporation.

11 (d) Mortgage loan correspondent license.--The department
12 shall issue a loan correspondent's license applied for under
13 this chapter if the applicant:

14 (1) Obtains and will maintain a bond in the amount of
15 \$100,000, in a form acceptable to the department, prior to
16 the issuance of the license, from a surety company authorized
17 to do business in this Commonwealth. The bond shall run to
18 the Commonwealth and shall be for the use of the Commonwealth
19 and any person or persons who obtain a judgment against the
20 mortgage loan correspondent for failure to carry out the
21 terms of any provision for which advance fees are paid. No
22 bond shall comply with the requirements of this section
23 unless it contains a provision that it shall not be canceled
24 for any cause unless notice of intention to cancel is given
25 to the department at least 30 days before the day upon which
26 cancellation shall take effect.

27 (2) Establishes a minimum tangible net worth of \$100,000
28 at the time of application and will, at all times thereafter,
29 maintain the minimum tangible net worth.

30 (e) Mortgage broker license.--

1 (1) The department shall issue a mortgage broker license
2 applied for under this chapter if the applicant obtains and
3 will maintain a bond in the amount of \$100,000, in a form
4 acceptable to the department, prior to the issuance of the
5 license, from a surety company authorized to do business in
6 this Commonwealth. The bond shall be a penal bond conditioned
7 on compliance with this chapter and subject to forfeiture by
8 the department and shall run to the Commonwealth for its use.
9 The bond shall also be for the use of any person against the
10 mortgage broker for failure to carry out the terms of any
11 provision for which advance fees are paid. If the person is
12 aggrieved, the person may, with the written consent of the
13 department, recover advance fees and costs from the bond by
14 filing a claim with the surety company or maintaining an
15 action on the bond. In the alternative, an aggrieved person
16 may recover advance fees and costs by filing a formal
17 complaint against the mortgage broker with the department
18 which shall adjudicate the matter. The adjudication shall be
19 binding upon the surety company and enforceable by the
20 department in Commonwealth Court and by an aggrieved person
21 in any court. Any aggrieved person seeking to recover advance
22 fees and costs from a bond that has already been forfeited by
23 the department or which the department is in the process of
24 forfeiting may recover payment on the bond if, after filing a
25 petition with the department, the department consents to the
26 aggrieved person's requested payment or portion thereof. The
27 department may pay the aggrieved person from the bond
28 proceeds it recovers. Nothing in this section shall be
29 construed as limiting the ability of any court or magisterial
30 district judge to award to any aggrieved person other

1 damages, court costs and attorney fees as permitted by law,
2 but those claims that are not advance fees or related costs
3 may not be recovered from the bond. The department, in its
4 discretion, may consent to or order pro rata or other
5 recovery on the bond for any aggrieved person if claims
6 against the bond may or do exceed its full monetary amount.
7 No bond shall comply with the requirements of this section
8 unless it contains a provision that it shall not be canceled
9 for any cause unless notice of intention to cancel is given
10 to the department at least 30 days before the day upon which
11 cancellation shall take effect. Cancellation of the bond
12 shall not invalidate the bond regarding the period of time it
13 was in effect.

14 (2) Mortgage brokers who can demonstrate to the
15 satisfaction of the department that they do not and will not
16 accept advance fees shall be exempt from the bond requirement
17 of this subsection.

18 (f) Mortgage originator license.--A mortgage originator
19 shall be an employee of a single mortgage broker, mortgage
20 lender or mortgage loan correspondent licensed under this
21 chapter, which licensee shall directly supervise, control and
22 maintain responsibility for the acts and omissions of the
23 mortgage originator. A mortgage originator shall be assigned to
24 and work out of a licensed location of the employer licensee.

25 (g) Education.--

26 (1) In order to obtain a license under this chapter, an
27 applicant shall submit to the department with its application
28 evidence that the applicant or an officer of the applicant
29 has successfully completed a minimum of 12 hours of
30 instruction and a testing program regarding the first and

1 secondary mortgage loan businesses and the provisions of this
2 chapter, the act of January 30, 1974 (P.L.13, No.6), referred
3 to as the Loan Interest and Protection Law and relevant
4 Federal law including the Real Estate Settlement Procedures
5 Act of 1974 (Public Law 93-533, 88 Stat. 1724), Truth in
6 Lending provisions of Title I of the Consumer Credit
7 Protection Act (Public Law 90-321, 15 U.S.C. § 1601 et seq.)
8 and the Equal Credit Opportunity Act (Public Law 93-495, 15
9 U.S.C. § 1691 et seq.).

10 (2) In order to maintain a license:

11 (i) A mortgage broker, mortgage lender or mortgage
12 loan correspondent shall demonstrate to the satisfaction
13 of the department that at least one individual from each
14 licensed office that is not a mortgage originator, and
15 all mortgage originators employed by the licensee, have
16 attended a minimum of six hours of continuing education
17 each year.

18 (ii) A mortgage originator licensee shall
19 demonstrate to the satisfaction of the department that
20 the licensee has attended a minimum of six hours of
21 continuing education each year.

22 (3) The department shall delineate the requirements for
23 prequalification education and testing and continuing
24 education by regulation. The department may review and
25 approve education programs and providers to satisfy the
26 education requirements. Providers of prequalification
27 education and testing and continuing education programs may
28 include the licensee or a subsidiary or affiliate of the
29 licensee. The department may charge providers of education
30 programs a fee, to be determined by the department, for

1 department review of education programs and providers.

2 (h) License renewals.--Licenses shall be issued for terms of
3 12 months and may be renewed by the department each year on a
4 schedule set by the department upon application by the licensee
5 and the payment of any and all applicable renewal fees. The
6 licensee shall demonstrate to the department that it is
7 conducting the mortgage loan business in accordance with the
8 requirements of this chapter and that the directors, officers,
9 partners, employees, agents and ultimate equitable owners of 10%
10 or more of the licensee continue to meet all of the initial
11 requirements for licensure required by this chapter unless
12 otherwise determined by the department.

13 (i) Out-of-State applicants.--

14 (1) If an applicant is not a resident of this
15 Commonwealth, as a condition to receiving a license under
16 this chapter, the applicant shall be authorized to do
17 business in this Commonwealth in accordance with the laws of
18 this Commonwealth regulating corporations and other entities
19 conducting business in this Commonwealth and shall maintain
20 at least one office in this Commonwealth which is the office
21 that shall be licensed as the principal place of business for
22 the purposes of this chapter. Wholesale table funders shall
23 be exempt from the requirement to maintain at least one
24 office in this Commonwealth.

25 (2) Out-of-State applicants shall file with the license
26 application an irrevocable consent, duly acknowledged, that
27 suits and actions may be commenced against that person in the
28 courts of this Commonwealth by the service of process of any
29 pleading upon the department in the usual manner provided for
30 service of process and pleadings by the laws and court rules

1 of this Commonwealth. The consent shall provide that this
2 service shall be as valid and binding as if service had been
3 made personally upon the person in this Commonwealth. In all
4 cases where process or pleadings are served upon the
5 department under the provisions of this section, the process
6 or pleadings shall be served in triplicate, one copy shall be
7 filed in the department's offices and the others shall be
8 forwarded by the department, by certified or registered mail,
9 return receipt requested, to the last known principal place
10 of business of the person.

11 § 6132. License fees.

12 (a) Initial application fees.--An applicant shall pay to the
13 department at the time an application is filed an initial
14 nonrefundable application fee as set forth under this
15 subsection.

16 (1) For mortgage lenders and mortgage loan
17 correspondents, \$1,500 for the principal place of business in
18 this Commonwealth and an additional fee of \$1,500 for each
19 branch office.

20 (2) For mortgage brokers, \$1,000 for the principal place
21 of business in this Commonwealth and an additional fee of
22 \$250 for each branch office.

23 (3) Subject to the limitations under subsection (c), for
24 mortgage originators, \$100.

25 (b) Renewal fees.--Prior to each annual renewal of a
26 license, a licensee shall pay to the department a nonrefundable
27 license renewal fee as set forth under this subsection.

28 (1) For mortgage lenders and mortgage loan
29 correspondents, \$750 for the principal place of business in
30 this Commonwealth and an additional fee of \$750 for each

1 branch office.

2 (2) For mortgage brokers, \$500 for the principal place
3 of business in this Commonwealth and an additional fee of
4 \$250 for each branch office.

5 (3) Subject to the limitations under subsection (c), for
6 mortgage originators, \$100.

7 (c) Fee limitation.--For a licensee that employs 50 or more
8 mortgage originators, the initial application fee and license
9 renewal fee shall be \$50 per mortgage originator, to a maximum
10 of \$10,000 total per year.

11 (d) No abatement of fee.--No abatement of a licensee fee
12 shall be made if the license is issued for a period of less than
13 one year.

14 § 6133. Issuance of license.

15 (a) Time limit.--Within 60 days after a completed
16 application is received, the department shall either issue a
17 license, or for any reason which the department may refuse to
18 issue a license under this section or for which the department
19 may suspend, revoke or refuse to renew a license under section
20 6139 (relating to suspension, revocation or refusal), refuse to
21 issue a license. The 60-day time limit specified in this
22 subsection may be extended by the department for an additional
23 30 days if the department determines that the extension is
24 necessary. The department shall provide written notification to
25 any applicant whose application review has been extended and
26 include the final date by which a decision shall be rendered
27 regarding the application.

28 (a.1) Investigations.--Upon receipt of an application for a
29 license, the department may conduct an investigation of the
30 applicant or a director, officer, partner, employee, agent or

1 ultimate equitable owner of 10% or more of the applicant as it
2 deems necessary.

3 (b) Appeal of denial.--If the department refuses to issue a
4 license, it shall notify the applicant in writing of the denial,
5 the reason for the denial and the applicant's right to appeal
6 the denial to the Secretary of Banking. An appeal from the
7 department's refusal to approve an application for a license
8 must be filed by the applicant within 30 days of notice of
9 refusal.

10 (c) Contents of license.--Each license issued by the
11 department shall specify:

12 (1) The name and address of the licensee and the address
13 or addresses covered by the license, the address so specified
14 to be that of the licensee's principal place of business
15 within this Commonwealth, or for a licensee acting only in
16 the capacity of a wholesale table funder, either in or
17 outside of this Commonwealth.

18 (2) The licensee's reference number.

19 (3) Any other information the department shall require
20 to carry out the purposes of this chapter.

21 (d) Denial of license due to conviction.--

22 (1) The department may deny a license if it finds that
23 the applicant or a director, officer, partner, employee,
24 agent or ultimate equitable owner of 10% or more of the
25 applicant has been convicted of a crime of moral turpitude or
26 felony in any jurisdiction or of a crime which, if committed
27 in this Commonwealth, would constitute a crime of moral
28 turpitude or felony. For the purposes of this subsection, a
29 person shall be deemed to have been convicted of a crime if
30 the person:

1 (i) pleads guilty or nolo contendere to a criminal
2 charge before a court or Federal magistrate; or

3 (ii) is found guilty by the decision or judgment of
4 a court or Federal magistrate or by the verdict of a
5 jury, irrespective of the pronouncement of sentence or
6 the suspension thereof, unless the plea of guilty or nolo
7 contendere or the decision, judgment or verdict is set
8 aside, vacated, reversed or otherwise abrogated by lawful
9 judicial process.

10 (2) A license under this chapter shall be deemed to be a
11 covered license within the meaning of section 405 of the act
12 of May 15, 1933 (P.L.565, No.111), known as the Department of
13 Banking Code. The department shall notify a licensee if a
14 covered individual within the meaning of section 405 of the
15 Department of Banking Code that is or will be employed or
16 contracted by the licensee has a criminal background that
17 renders the employee unfit for employment in the mortgage
18 loan business.

19 (e) Denial of license for other reason.--The department may
20 deny a license or otherwise restrict a license if it finds that
21 the applicant or a director, officer, partner, employee, agent
22 or ultimate equitable owner of 10% or more of the applicant:

23 (1) has had a license application or license issued by
24 the department denied, not renewed, suspended or revoked;

25 (2) is the subject of an order of the department;

26 (3) has violated or failed to comply with any provision
27 of this chapter or any regulation, statement of policy or
28 order of the department;

29 (4) does not possess the financial responsibility,
30 character, reputation, integrity and general fitness to

1 command the confidence of the public and to warrant the
2 belief that the mortgage loan business will be operated
3 lawfully, honestly, fairly and within the legislative intent
4 of this chapter and in accordance with the general laws of
5 this Commonwealth; or

6 (5) has an outstanding debt to the Commonwealth or any
7 Commonwealth agency.

8 (f) Conditional licenses.--The department may impose
9 conditions on the issuance of any license under this chapter. If
10 the department determines that conditions imposed upon a
11 licensee have not been fulfilled, the department may take any
12 action authorized under this chapter against the licensee that
13 the department deems necessary. In the case of mortgage
14 originator applicants, the department may issue mortgage
15 originator licenses effective immediately upon receipt of an
16 application, which licenses shall be conditional licenses issued
17 under this subsection.

18 § 6134. License duration.

19 A license issued by the department shall be subject to all of
20 the following limitations:

21 (1) Be renewed on the licensee's renewal date each year
22 upon completion of the requirements of section 6131(h)
23 (relating to application for license). No refund of any
24 portion of the license fee shall be made if the license is
25 voluntarily surrendered to the department or suspended or
26 revoked by the department prior to its expiration date.

27 (2) Be invalid if the licensee's authority to conduct
28 business is voided under any law of this Commonwealth or any
29 other state, unless the licensee demonstrates to the
30 satisfaction of the department that the applicable court or

1 governmental entity was clearly erroneous in voiding the
2 licensee's authority to conduct business.

3 (3) Not be assignable or transferable by operation of
4 law or otherwise.

5 § 6135. Licensee requirements.

6 (a) Requirements of licensee.--

7 (1) A licensee who is a mortgage broker, mortgage lender
8 or mortgage loan correspondent shall conspicuously display,
9 at each licensed place of business, its license and copies of
10 the licenses of all mortgage originators assigned to that
11 location. A licensee who is a mortgage originator shall keep
12 the license in the immediate possession of the licensee
13 whenever the licensee is engaged in the mortgage loan
14 business.

15 (2) Each licensee shall maintain at its principal place
16 of business within this Commonwealth, or at such place within
17 or outside this Commonwealth if agreed to by the department,
18 the original or a copy of any books, accounts, records and
19 documents, or electronic or similar access thereto, of the
20 business conducted under the license as prescribed by the
21 department to enable the department to determine whether the
22 business of the licensee is being conducted in accordance
23 with the provisions of this chapter and the regulations,
24 statements of policy or orders issued under this chapter. The
25 department shall have free access to and authorization to
26 examine records maintained within or outside this
27 Commonwealth by the licensee. The costs of the examination,
28 including travel costs, shall be borne by the licensee. The
29 department may deny or revoke the authority to maintain
30 records within or outside this Commonwealth for good cause in

1 the interest of protection for Commonwealth consumers,
2 including for the licensee's failure to provide books,
3 accounts, records or documents to the department upon
4 request.

5 (3) A mortgage broker, mortgage lender or mortgage loan
6 correspondent, on a date determined by the department, shall
7 file annually a report with the department setting forth such
8 information as the department shall require concerning the
9 first or secondary mortgage loan business conducted by the
10 licensee during the preceding calendar year. The report shall
11 be in writing and under oath on a form provided by the
12 department. Licensees who fail to file the required report at
13 the date required by the department shall be subject to a
14 penalty of \$100 for each day after the due date until the
15 report is filed.

16 (4) Each licensee shall be subject to examination by the
17 department at its discretion, at which time the department
18 shall have free access, during regular business hours, to the
19 licensee's place or places of business in this Commonwealth
20 and to all instruments, documents, accounts, books and
21 records which pertain to a licensee's first or secondary
22 mortgage loan business, whether maintained in or outside this
23 Commonwealth. The department may examine a licensee at any
24 time if the department deems the examination to be necessary
25 or desirable. The cost of any such examination shall be borne
26 by the licensee.

27 (5) Each licensee shall include in all advertisements
28 language indicating that the licensee is licensed by the
29 department. In the case of a mortgage originator, all
30 advertising shall include the name of the mortgage

1 originator's employer.

2 (b) Accounting records.--The licensee's accounting records
3 must be constructed and maintained in compliance with generally
4 accepted accounting principles or as provided by department
5 regulation. All instruments, documents, accounts, books and
6 records relating to the mortgage loan business shall be kept
7 separate and apart from the records of any other business
8 conducted by the licensee. Records of first and secondary
9 mortgage loans shall be easily distinguishable and easily
10 separated. All records shall be preserved and kept available for
11 investigation or examination by the department for a period
12 determined by the department.

13 (c) Copies.--If copies of instruments, documents, accounts,
14 books or records are maintained under subsection (a)(2), they
15 may be photostatic, microfilm or electronic copies or copies
16 provided in some other manner approved by the department.

17 § 6136. Licensee limitations.

18 (a) Name and changes to name.--A licensee cannot transact
19 any business under this chapter under any other name or names
20 except those names designated in its license. A mortgage
21 originator may not use any other name other than the mortgage
22 originator's personal legal name. A licensee that changes its
23 name or place or places of business shall notify the department
24 within ten days of the change and the department shall issue a
25 certificate to the licensee, if appropriate, which shall specify
26 the licensee's new name or address.

27 (b) Other businesses.--A licensee cannot conduct a business
28 other than the mortgage loan business licensed by the department
29 under this chapter without at least 30 days' prior written
30 notification to the department.

1 § 6137. Surrender of license.

2 Upon satisfying the department that all creditors of a
3 licensee have been paid or that other arrangements satisfactory
4 to the creditors and the department have been made, a licensee
5 may voluntarily surrender its license to the department by
6 delivering its license to the department with written notice
7 that the license is being voluntarily surrendered, but an action
8 by a licensee shall not affect the licensee's civil or criminal
9 liability for acts committed.

10 § 6138. Authority of department.

11 (a) General authority.--The department shall have the
12 authority to:

13 (1) Examine any instrument, document, account, book,
14 record or file of a licensee or any person having a
15 connection to the licensee or make other investigation as may
16 be necessary to administer the provisions of this chapter.
17 Pursuant to this authority, the department may remove any
18 instrument, document, account, book, record or file of a
19 licensee to a location outside of the licensee's office
20 location. The costs of the examination shall be borne by the
21 licensee or the entity subject to the examination.

22 (2) Conduct administrative hearings on any matter
23 pertaining to this chapter, issue subpoenas to compel the
24 attendance of witnesses and the production of instruments,
25 documents, accounts, books and records at any hearing. The
26 instruments, documents, accounts, books and records may be
27 retained by the department until the completion of all
28 proceedings in connection with which the materials were
29 produced. A department official may administer oaths and
30 affirmations to a person whose testimony is required. In the

1 event a person fails to comply with a subpoena issued by the
2 department or to testify on a matter concerning which he may
3 be lawfully interrogated, on application by the department,
4 the Commonwealth Court may issue an order requiring the
5 attendance of the person, the production of instruments,
6 documents, accounts, books and records and the giving of
7 testimony.

8 (3) Request and receive information or records of any
9 kind, including reports of criminal history record
10 information from any Federal, State, local or foreign
11 government entity regarding an applicant for a license,
12 licensee or person related in any way to the business of the
13 applicant or licensee, at a cost to be paid by the applicant
14 or licensee.

15 (4) Issue regulations, statements of policy or orders as
16 may be necessary for the proper conduct of the mortgage loan
17 business by licensees, the issuance and renewal of licenses
18 and the enforcement of this chapter.

19 (5) Prohibit or permanently remove an individual
20 responsible for a violation of this chapter from working in
21 the person's present capacity or in any other capacity
22 related to activities regulated by the department.

23 (6) Order a person to make restitution for actual
24 damages to consumers caused by any violation of this chapter.

25 (7) Issue cease and desist orders that are effective
26 immediately, subject to a hearing as specified in subsection
27 (b) within 14 days of the issuance of the order.

28 (8) Impose such other conditions as the department deems
29 appropriate.

30 (b) Hearings.--A person aggrieved by a decision of the

1 department may appeal the decision of the department to the
2 Secretary of Banking. The appeal shall be conducted under 2
3 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
4 Commonwealth agencies).

5 (c) Injunctions.--The department may maintain an action for
6 an injunction or other process against a person to restrain and
7 prevent the person from engaging in an activity violating this
8 chapter.

9 (d) Final orders.--A decision of the Secretary of Banking
10 shall be a final order of the department and shall be
11 enforceable in a court of competent jurisdiction. The department
12 may publish final adjudications issued under this section,
13 subject to redaction or modification to preserve
14 confidentiality.

15 (e) Appeals.--A person aggrieved by a decision of the
16 Secretary of Banking may appeal the decision under 2 Pa.C.S. Ch.
17 7 Subch A. (relating to judicial review of Commonwealth agency
18 action).

19 (f) Orders affecting mortgage originators.--An order issued
20 against a licensee is applicable to the mortgage originators
21 employed by the licensee.

22 § 6139. Suspension, revocation or refusal.

23 (a) Departmental action.--The department may suspend, revoke
24 or refuse to renew a license issued under this chapter if any
25 fact or condition exists or is discovered which, if it had
26 existed or had been discovered at the time of filing of the
27 application for the license, would have warranted the department
28 in refusing to issue the license or if a licensee or director,
29 officer, partner, employee or owner of a licensee has:

30 (1) Made a material misstatement in an application or

1 any report or submission required by this chapter or any
2 department regulation, statement of policy or order.

3 (2) Failed to comply with or violated any provision of
4 this chapter or any regulation or order promulgated or issued
5 by the department under this chapter.

6 (3) Engaged in dishonest, fraudulent or illegal
7 practices or conduct in a business or unfair or unethical
8 practices or conduct in connection with the mortgage loan
9 business.

10 (4) Been convicted of or pleaded guilty or nolo
11 contendere to a crime of moral turpitude or felony.

12 (5) Permanently or temporarily been enjoined by a court
13 of competent jurisdiction from engaging in or continuing
14 conduct or a practice involving an aspect of the mortgage
15 loan business.

16 (6) Become the subject of an order of the department
17 denying, suspending or revoking a license applied for or
18 issued under this chapter.

19 (7) Become the subject of a United States Postal Service
20 fraud order.

21 (8) Failed to comply with the requirements of this
22 chapter to make and keep records prescribed by regulation,
23 statement of policy or order of the department, to produce
24 records required by the department or to file financial
25 reports or other information that the department by
26 regulation, statement of policy or order may require.

27 (9) Become the subject of an order of the department
28 denying, suspending or revoking a license under the
29 provisions of any other law administered by the department.

30 (10) Demonstrated negligence or incompetence in

1 performing an act for which the licensee is required to hold
2 a license under this chapter.

3 (11) Accepted an advance fee without having obtained the
4 bond required by section 6131(d)(1) or (e)(1) (relating to
5 application for license).

6 (12) Become insolvent, meaning that the liabilities of
7 the applicant or licensee exceed the assets of the applicant
8 or licensee or that the applicant or licensee cannot meet the
9 obligations of the applicant or licensee as they mature or is
10 in such financial condition that the applicant or licensee
11 cannot continue in business with safety to the customers of
12 the applicant or licensee.

13 (13) Failed to complete the qualifying or continuing
14 education as required by section 6131(g).

15 (14) In the case of a mortgage broker, mortgage lender
16 or mortgage loan correspondent, conducted the mortgage loan
17 business through an unlicensed mortgage originator.

18 (15) Failed to comply with the terms of any agreement
19 under which the department authorizes a licensee to maintain
20 records at a place other than the licensee's principal place
21 of business.

22 (b) Reinstatement.--The department may reinstate a license
23 which was previously revoked or denied renewal if all of the
24 following exist:

25 (1) The condition which warranted the original action
26 has been corrected to the department's satisfaction.

27 (2) The department has reason to believe that the
28 condition is not likely to occur again.

29 (3) The licensee satisfies all other requirements of
30 this chapter.

1 § 6140. Penalties.

2 (a) Persons operating without licenses.-A person subject to
3 the provisions of this chapter and not licensed by the
4 department who violates any provision of this chapter or who
5 commits any action which would subject a license to suspension,
6 revocation or nonrenewal under section 6139 (relating to
7 suspension, revocation or refusal) may be fined by the
8 department up to \$10,000 for each offense.

9 (b) Violation by licensee.--A person licensed under this
10 chapter or director, officer, owner, partner, employee or agent
11 of a licensee who violates a provision of this chapter or who
12 commits any action which would subject the licensee to
13 suspension, revocation or nonrenewal under section 6139 may be
14 fined by the department up to \$10,000 for each offense.

15 SUBCHAPTER E

16 MISCELLANEOUS PROVISIONS

17 Sec.

18 6151. Applicability.

19 6152. Relationship to other laws.

20 6153. Preservation of existing contracts.

21 § 6151. Applicability.

22 The provisions of this chapter shall apply to:

23 (1) Any mortgage loan which is:

24 (i) negotiated, offered or otherwise transacted
25 within this Commonwealth, in whole or in part, whether by
26 the ultimate lender or any other person;

27 (ii) made or executed within this Commonwealth; or

28 (iii) notwithstanding the place of execution,
29 secured by real property located in this Commonwealth.

30 (2) Any person who engages in the mortgage loan business

1 in this Commonwealth.

2 Section 6152. Relationship to other laws.

3 (a) General rule.--

4 (1) A political subdivision may not enact or enforce any
5 ordinance, resolution or regulation pertaining to the
6 financial or lending activities of a person that:

7 (i) is subject to the jurisdiction of the
8 department, including activities subject to this chapter;

9 (ii) is subject to the jurisdiction or regulatory
10 supervision of the Board of Governors of the Federal
11 Reserve System, the Office of the Comptroller of the
12 Currency, the Office of Thrift Supervision, the National
13 Credit Union Administration, the Federal Deposit
14 Insurance Corporation, the Federal Trade Commission or
15 the United States Department of Housing and Urban
16 Development; or

17 (iii) originates, purchases, sells, assigns,
18 securitizes or services any property interest or
19 obligation created by a financial transaction or loan
20 made, executed or originated by a person referred to in
21 subparagraph (i) or (ii) or assists or facilitates such a
22 transaction or loan.

23 (2) This subsection applies to any ordinance, resolution
24 or regulation pertaining to financial or lending activity,
25 including any ordinance, resolution or regulation:

26 (i) disqualifying a person from doing business with
27 a political subdivision based upon financial or lending
28 activity; or

29 (ii) imposing reporting requirements or any other
30 obligations upon a person regarding financial or lending

1 activity.

2 (b) Corporate powers.--Nothing in this chapter shall be
3 deemed to:

4 (1) limit the corporate powers of incorporated
5 institutions or their subsidiaries subject to the act of
6 November 30, 1965 (P.L.847, No.356), known as the Banking
7 Code of 1965; or

8 (2) impose conditions, limitations or restrictions upon
9 the exercise of corporate powers contrary to the provisions
10 of section 201 of the Banking Code of 1965.

11 (c) Preemption.--A provision of this chapter preempted by
12 Federal law with respect to a national bank or Federal savings
13 association shall not apply to the same extent to an operating
14 subsidiary of a national bank or Federal savings association
15 which satisfies the requirements for operating subsidiaries
16 established in 12 CFR § 5.34 (relating to operating
17 subsidiaries) or 559.3 (relating to what are the characteristics
18 of, and what requirements apply to, subordinate organizations of
19 Federal savings associations).

20 (d) Interpretation.--The provisions of this chapter shall be
21 interpreted and applied to the fullest extent practical in a
22 manner consistent with applicable Federal laws and regulations,
23 policies and orders of Federal regulatory agencies and shall not
24 be deemed to constitute an attempt to override Federal law.

25 § 6153. Preservation of existing contracts.

26 Nothing contained in this chapter shall be construed to
27 impair or affect first or secondary mortgage loans executed
28 prior to the effective date of this chapter.

29 Section 2. Title 18 is amended by adding a section to read:
30 § 7331. Unlicensed mortgage loan business.

1 A person that operates without a license in violation of 7
2 Pa.C.S. § 6111 (relating to license requirements) commits a
3 felony of the third degree.

4 Section 3. Repeals.

5 (a) Intent.--The General Assembly declares that the repeals
6 under ~~paragraph (2)~~ SUBSECTION (B) are necessary to effectuate ←
7 the provisions of 7 Pa.C.S. Ch. 61.

8 (b) Provision.--The following acts and parts of acts are
9 repealed:

10 (1) Chapter 3 of the act of December 22, 1989 (P.L.687,
11 No.90), known as the Mortgage Bankers and Brokers and
12 Consumer Equity Protection Act.

13 (2) The act of December 12, 1980 (P.L.1179, No.219),
14 known as the Secondary Mortgage Loan Act.

15 Section 4. Transition shall be as follows:

16 (1) A license issued under an act repealed by section 3
17 of this act shall remain in full force and effect as a
18 transitional license, and loans may continue to be made under
19 the transitional license.

20 (2) The following are the requirements for a
21 transitional license:

22 (i) The person holding the license under the
23 repealed act must submit an application for a license
24 under 7 Pa.C.S. Ch. 61 within 60 days of the effective
25 date of this section. An application shall be valid under
26 this paragraph if the names, birth dates and addresses of
27 all individual mortgage solicitors required to be
28 licensed under 7 Pa.C.S. Ch. 61 and employed by the
29 license holder have also been listed with the department
30 as individuals currently employed as mortgage originators

1 who will be applying for individual licenses under 7
2 Pa.C.S. Ch. 61.

3 (ii) Upon filing an application for a license under
4 7 Pa.C.S. Ch. 61, an applicant must proceed expeditiously
5 in accordance with the directions of the department.

6 (3) The department shall set forth for a reasonable time
7 period for transition under this section as a notice in the
8 Pennsylvania Bulletin. The time period shall be at least 90
9 days but not more than 180 days and shall include the
10 training and submission of applications by all mortgage loan
11 solicitors employed by the licensee.

12 Section 5. This act shall take effect in 60 days.